



June 22, 2016

VIA Electronic Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

Re: Notice of Ex Parte Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

On June 20-21, 2016, the National Council of Higher Education Resources (NCHER) had separate meetings with staff of Chairman Tom Wheeler, Commissioner Jessica Rosenworcel, Commissioner Michael O’Rielly, and the Bureau of Consumer and Government Affairs. We discussed comments filed on the Federal Communications Commission’s (FCC) Notice of Proposed Rulemaking (NPRM) released May 6, 2016 that implements provisions contained in Section 301 of the Bipartisan Budget Act of 2015, which amended the Telephone Consumer Protection Act (TCPA) to explicitly authorize the use of auto-dialer technology to collect debts owed to or guaranteed by the United States.

NCHER is a national, nonprofit trade association that represents higher education service agencies that administer education programs that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program (FFELP). All of these state, nonprofit, and for-profit organizations are impacted by the proposals contained in the NPRM on the use of auto-dialer technology to collect debts owed to or guaranteed by the United States.

NCHER staff and representation in attendance for the meetings included:

- James Bergeron, President
- Sean Devere, Vice President, Government Relations
- Sheldon Repp, Senior Advisor
- Alex Nock, Penn Hill Group, on behalf of NCHER (Mr. Nock attended the meetings with Commissioner O’Rielly’s staff and the Consumer and Government Affairs Bureau)

The FCC staff with which the above individuals met included:

- Diane Cornell, Chairman Tom Wheeler
- Travis Litman, Commissioner Jessica Rosenworcel
- Jennifer Thompson, Commissioner Jessica Rosenworcel

- Amy Bender, Commissioner Michael O’Rielly
- John B. Adams, Bureau of Consumer and Government Affairs
- Kurt Schroeder, Bureau of Consumer and Government Affairs
- Kristi Thornton, Bureau of Consumer and Government Affairs

Generally, NCHER discussed the same issues during each meeting. These matters were subsequently included in the letter replying to the public comments that NCHER filed with the FCC on June 21, 2016 (a copy of those comments is attached). The following is a summary of the major points made during the meetings:

- Due to the unique nature of federal student loans, including the specific benefits that the Congress has made available to help struggling borrowers, we believe a separate set of rules for federal student loans is appropriate.
- The NPRM’s three call attempt per month limit is too low. Congress has provided student loan servicers and collectors with the tools necessary to help student and parent borrowers that are struggling to make payments on their loans. However, these programs are complex and our members need to talk to the borrowers to explain these opportunities for relief and assist them in staying out of delinquency and default. Our initial and reply comments reference information from our members that demonstrates that a higher number of call attempts and live-calls is commonly needed to actually reach borrowers and explain the intricacies of the various available options.

While our specific recommendation regarding the number of phone calls is included in our initial and reply comments, NCHER pointed out that the National Consumer Law Center (NCLC), in an Ex Parte letter dated June 6, 2015 [sic] and posted on the FCC’s Electronic Comment Filing System on June 12, 2014, recommended that: *“The FCC should limit collection calls to three calls per week, voicemail messages to one per week, and call-backs to once per week unless the consumer gives specific consent at the time of the call.”*¹ We pointed out that this recommendation is more permissive than the FCC’s proposed rule.

- There is some confusion as to whether the calling limit contained in the NPRM applies on a per loan, per borrower, or per servicer basis. Some consumer groups have interpreted the proposal as applying the three calls per month limit to each loan a borrower has, and then states that since student loan borrowers take out two or more loans per semester, the FCC’s proposal will allow too many calls. While this group’s preference would be for the limit on unconsented calls be applied to each debtor, they understand this limit might be difficult to coordinate among multiple servicers or collectors. The groups recommend that the limit should be applied to each servicer or collector. NCHER agrees with this statement, with the caveat that the higher limit we propose should apply per servicer or collector for all loans of a borrower that can be combined for the purpose of contacting the borrower under the rules of the applicable federal loan program. In some cases, student and parent borrowers have both Federal Direct Loans and FFELP loans with the same servicer, and such loans may not be able to be combined for servicing purposes.
- Student loan servicers should not have to wait until a borrower is delinquent before making calls under the exception. In many cases it is too late then to prevent damage to the borrower’s credit report. Borrowers need to receive information to help them choose the repayment plan best suited for their unique circumstances well before this time. We noted that NCLC in its

¹ June 6, 2015 [sic] Notice of Ex Parte Presentation signed by Margot Saunders, Keith Keogh and Ellen Taverna, posted June 12, 2014, p.12.

comments suggested moving up the trigger date proposed by the FCC to allow calls to borrowers that are “delinquent in meeting recertification requirements for a repayment plan.” We appreciate this comment, but suggest that there are other decision points in the life-cycle of a student loan where borrower communication is also critical. In this regard, we referenced comments submitted by the Consumer Financial Protection Bureau which stated that collectors and servicers should be permitted to convey content that is “(1) required by a law or regulation that governs the servicing or collections; or (2) relates to an effort to engage in loss mitigation or offer the consumer an alternate repayment plan (emphasis added)”. We believe this suggestion should be given serious consideration.

- Trade associations representing institutions of higher education, such as the American Association of Community Colleges (AACC) and the United Negro College Fund (UNCP), support the ability of servicers and collectors to communicate more effectively with student loan borrowers. Colleges and universities, especially those that educate a large proportion of low-income and minority students are likely to have higher cohort default rates if their students do not receive assistance in enrolling in an appropriate repayment plan or managing their student loan debt. Under the Higher Education Act, institutions that have default rates above a certain threshold lose eligibility for all federal student aid, including Pell Grants and Work-Study program funds. This provision impacts students receiving federal student loans as well as those students that do not receive federal student loans.

If you have any questions, please feel free to contact NCHER’s Vice President of Government Relations, Sean Devereey at sdevereey@ncher.us or (202)822-2106.

Sincerely,

A handwritten signature in black ink, appearing to read "J P Bergeron", with a stylized flourish at the end.

James P. Bergeron
President

Attachment



National Council of Higher Education Resources



June 21, 2016

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

RE: Reply Comments on Notice of Proposed Rulemaking
CG Docket No. 02-278

Dear Ms. Dortch:

The National Council of Higher Education Resources (NCHER) is a national, nonprofit trade association representing state, nonprofit, and for-profit higher education assistance agencies that administer grant and loan programs to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program.

NCHER is providing reply comments to those received by the Federal Communications Commission (the "Commission") from entities responding to the May 6, 2016 Notice of Proposed Rulemaking (the "Notice"). The Notice requested comments on the Commission's proposal to prescribe regulations to restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service for the purpose of collecting a debt owed to or guaranteed by the United States, as contemplated by Section 301 of the Bipartisan Budget Act of 2015 (the "Budget Act"). The Budget Act exempts from the Telephone Consumer Protection Act's (TCPA) consent requirement calls made solely to collect a debt owed to or guaranteed by the United States.

The Commission's implementation questions include areas such as "which calls are covered by the phrase 'solely to collect,' how [to] restrict the number and duration of such calls, and how to implement such restrictions." The Notice states that the Commission believes that "three call [attempts] per month provide adequate opportunity to convey necessary information about debt, repayment, and other matters the caller wishes to communicate without consent of the called party."

On June 6, 2016, NCHER provided the Commission with comments that stated that the three-call arbitrary limit will be harmful to millions of federal student loan borrowers who want and need timely and accurate information to better manage their debt to avoid delinquency and default and to rehabilitate their defaulted loans. In our response, we noted that there was general confusion among commenters regarding the Commission's intent to limit the frequency of covered calls in stating "*we propose to restrict the number of covered calls to three per month, per delinquency only after delinquency.*" Specifically, some commenters interpreted "per delinquency" to mean "per loan," rather

than per borrower or per servicer or collector. NCHER interpreted the Notice to mean “per borrower,” but understands the confusion. As noted by the National Consumer Law Center (NCLC), regulations that apply call limits “per borrower” would be unworkable unless it were clear that the limit applies to calls made by a specific servicer and collector, given that some borrowers have multiple servicers. Therefore, NCHER is clarifying its proposal on frequency and duration to apply to calls made “per servicer or collector for all loans that can be combined for the purpose of contacting the borrower under the rules of the federal loan program.” However, as addressed in more detail below, the number of calls allowed using a per loan limit (as potentially contemplated by the Commission) would actually be more in line with the limits that NCHER is proposing on a per borrower basis because most borrowers have a number of loans.

In our letter to the Commission on the frequency of calls, voice messages, and texts, NCHER proposed the following for federal student loans:

- 1) Regardless of whether a successful contact has been made, call attempts may not exceed nine in any consecutive seven-day period;
- 2) No further call attempts are allowed in the same week once a successful contact is made, which is defined as a live conversation with the borrower;
- 3) No more than three call attempts per day are permitted without consent of the person that owns the phone number called;
- 4) No more than one voice message may be delivered to the person called in any consecutive seven-day period;
- 5) No more than one text message may be sent to the person called in any consecutive seven-day period;
- 6) All contact attempts must be made between the hours of 8:00 a.m. and 9:00 p.m. in the time zone of the individual being called; and
- 7) Nothing in the rule limits or prohibits calls or texts requested or agreed upon by the consumer.

Regarding the duration of calls, voice messages, and texts, NCHER recommended that:

- 1) Voice or prerecorded messages cannot exceed 60 seconds;
- 2) Such calls resulting in live conversation regarding the servicing or collection of federal student loan debt are not limited in duration as this would curtail the ability to properly explain the various unique and often complex options available to resolve federal student loan delinquency and default, and to gather the factual information needed to help the consumer reach the option best suited for his or her individual circumstance; and
- 3) Nothing in this rule would preclude the called party from unilaterally ending the telephone contact.

NCHER pointed out in its initial comments, and repeats here, that NCLC, in an Ex Parte letter dated June 6, 2015 [sic] and posted on the Commission’s Electronic Comment Filing System on June 12, 2014, recommended that:

“The FCC should limit collection calls to three calls per week, voicemail messages to one per week, and call-backs to once per week unless the consumer gives specific consent at the time of the call.”¹

¹ June 6, 2015 [sic] Notice of Ex Parte Presentation signed by Margot Saunders, Keith Keogh and Ellen Taverna, posted June 12, 2014, p.12.

This recommendation by a leading consumer advocacy group is significantly more permissive than the Commission's proposal. We also note that this recommendation was written to apply across industry sectors. As we pointed out in our comment letter, NCHER believes that due to the unique nature of federal student loans, including the special benefits that Congress has made available to help struggling borrowers, a separate set of rules for these loans is appropriate. While NCHER recommends more contact attempts be allowed to better serve student loan borrowers (as detailed above), we believe the Commission's final rule certainly should be no more restrictive than that laid out in the NCLC recommendation in its 2014 Ex Parte letter to the Commission.

Thank you for the opportunity to provide reply comments on this important matter. NCHER's initial comments, and those included below, are made within the context of what is in the best interests of federal student loan borrowers and the federal student loan programs. If you have questions or need additional information, please contact me at 1100 Connecticut Avenue NW, Suite 1200, Washington, DC, 20036-4110, or by calling (202) 822-2106.

Sincerely,

A handwritten signature in black ink, appearing to read "J P Bergeron". The signature is fluid and cursive, with a long horizontal stroke at the end.

James P. Bergeron
President

NCHER Reply Comments to the Federal Communications Commission Related to Comments the Commission Received on its Notice of Proposed Rulemaking Regarding the Exemption under the Telephone Consumer Protection Act – CG Docket No. 02-278

At the onset, NCHER observes that the Commission received nearly 15,500 comments regarding the Notice, the overwhelming majority being short statements from individual consumers expressing concerns about abusive robocalls. According to many attorneys general and consumer groups, the bulk of these calls are from foreign-based callers.² We support action by the Commission to reduce the number of these truly harassing auto-dialed calls, which already violate the TCPA, while finding ways to allow legitimate calls that help student loan borrowers avoid delinquency and default.

Public Comments Received by the Commission, Supported by NCHER

Generally, NCHER endorses the comments submitted by the following organizations that specifically relate to the need for additional covered calls per month than the three attempts proposed by the Commission, and that recognize the importance of live conversations in the student loan space and how borrowers benefit by receiving timely and accurate information in order to better manage their student loan debt and have a more positive repayment experience:

- ACA International,
- American Association of Community Colleges,
- American Bankers Association and Consumer Bankers Association,
- Coalition of Higher Education Assistance Organizations,
- ConServe,
- Educational Credit Management Corporation,
- Education Finance Council,
- Iowa Student Loan,
- Navient,
- Nelnet,
- Student Loan Servicing Alliance, and the
- United Negro College Fund.

However, NCHER remains committed to its own specific recommendations in these areas to the extent they are inconsistent with those put forth by these organizations. In addition to this general endorsement, NCHER provides specific reply comments to those made by several of the organizations named above.

American Association of Community Colleges (AACC) Comment Letter

NCHER supports the comments made by AACC in their entirety. Students attending the nation's community colleges are often low-income, first-generation, and minority students. AACC notes that *"negative outcomes can be prevented if student loan servicers have early, frequent, and effective communication with borrowers."* We agree with AACC's statements that *"when students fail to repay their federal student loans and go into default, they not only face ruined credit, but also wage, tax refund, and social security garnishment,"* and that *"defaulted borrowers also lose eligibility for additional federal student aid, which effectively bars them from re-enrolling in college."* More broadly, the negative outcomes for postsecondary educational institutions with high default rates are particularly problematic

² Testimony by The Honorable Greg Zoeller, Attorney General, State of Indiana, before the Senate Committee on Commerce, Science, and Transportation hearing titled "The Telephone Consumer Protection Act at 25: Effects on Consumers and Business," May 18, 2016.

because their students could lose eligibility for all federal student aid, including eligibility for Pell Grants, if their default rate exceeds certain triggers. As AACC points out, this result is entirely preventable.

AACC also recommends that the Commission consider regulating the number of actual contacts (i.e., live connections with the borrower), not contact attempts, a concept that NCHER could endorse if the number of allowable contacts is sufficient to assist borrowers. We appreciate that AACC agrees that *“three call attempts per month is not sufficient when working to prevent a student loan default”* and that it recommends *“the regulations allow more attempts as borrowers enter late-stage delinquency.”*

We further agree with the AACC recommendation *“that all borrowers fall under reasonable autodialing limits to facilitate the process of enrolling or recertifying borrowers in income-driven repayment plans, to warn borrowers of the end of deferment and forbearance periods, and to follow up on documentation for loan discharges.”*

Finally, we note that AACC urges the Commission to *“consider developing a separate set of rules to assist federal student loan borrowers”* and that it is *“essential that these borrowers receive early, frequent, and effective communication from the loan servicers to prevent delinquency and default.”* This is precisely what NCHER has been advocating to the Commission.

Continental Service Group, Inc. d/b/a ConServe Comment Letter

NCHER notes ConServe’s comment that it only establishes contact with 24 percent of the borrowers who have accounts placed with it for collections, and agrees with its assessment that *“creating the contact is the barrier to borrowers moving out of default and into a successful payment agreement.”* We find ConServe’s data compelling that *“around 50% of the consumers who enter the rehabilitation program need approximately ten (10) follow-up contacts,”* and that *“one in five borrowers, to continue in the program, have needed approximately fifty (50) follow-up calls (which were consented to).”*

Like AACC’s comments, we note that ConServe believes that, *“if restrictions are required, any call number restriction should be determined by the number of live contacts, not number of calls attempted.”* ConServe notes that *“counting calls based on non-answered dials will not serve any purpose beneficial to borrowers and will interfere with the legitimate, beneficial objective of reaching borrowers at an effective rate.”*

Finally, we agree with ConServe’s observation that *“a call number restriction may also interfere with federal contractor ability to discharge its contractual obligations to the federal government.”*

Educational Credit Management Corporation (ECMC) Comment Letter

In its comment letter to the Commission, NCHER referenced data from Navient, one of the largest federal student loan servicers, regarding the number of call attempts that are needed to reach a borrower. ECMC also provided data on this point, reinforcing Navient’s position that multiple call attempts are necessary to make a live contact, and that live contacts lead to borrower resolutions. ECMC provides data from the last 18 months that shows *“for delinquent and defaulted federal student loan borrowers, it takes an average of 14.3 attempts to contact a consumer before a right party contact is established. For calls to delinquent, but not yet defaulted federal student loan borrowers, it takes between 8.5 and 21.4 attempts (increasing with the age of the delinquency) to contact a consumer before a right party contact is established. For defaulted loans, it takes an average of approximately 13.1 attempts to contact a consumer before a right party contact is established.”* NCHER urges the Commission to consider this additional data in support of rules specifically for the federal student loan industry that allows more covered call attempts than the three attempts permitted under the

Commission's Notice. Three call attempts per month will largely nullify meaningful student loan borrower contact.

Nelnet Comment Letter

NCHER finds the following data from Nelnet gripping: *"borrowers who Nelnet can autodial have delinquency rates less than half of those who Nelnet cannot autodial (13% versus 29%). Likewise, borrowers who Nelnet can autodial have a default rate six times lower than those who Nelnet cannot autodial (1.0% versus 6.1%)."*

NCHER also finds Nelnet's estimate of annual costs to the federal government driven by the inability to use technology to reach and help borrowers persuasive. Specifically, Nelnet notes, *"the fiscal impact autodialing has on the Department of Treasury amounts to over \$565 million quarterly and over \$2.2 billion annually in defaulted federal student loan debt"* due to the inability to use data-driven intelligence, automated dialing technology, and prerecorded voice messages *"to reach borrowers with critical information and education that could have prevented default or that could rehabilitate the borrower out of default and to keep the borrower out of debt collection."* Even more compelling than this financial loss to the federal government is the tremendous human costs to borrowers who default, or languish in default, simply because their servicers cannot use current technologies to reach them in a timely, efficient, and convenient-to-the-borrower manner.

United Negro College Fund (UNCF) Comment Letter

NCHER commends the UNCF for supporting the underlying purpose of the proposed rule to expand the ability of student loan servicers to use auto dialer technology to collect federal student loan debt. The UNCF comments state that federal student loan debt, and the ability to repay such debt, *"is a serious problem for African Americans."* UNCF's comments also note that *"as income driven repayment options are severely underutilized by borrowers, maximizing the ability of loan servicers to make early contact with borrowers to provide information on repayment options before delinquency is paramount."* Further, UNCF notes that *"income-driven repayment plans require annual recertification of income. This requirement can cause borrowers who initially enrolled in these plans but are not aware of the recertification requirement to revert back to a less favorable repayment plan. Auto dialer technology could be useful in reaching borrowers to ensure they are in a repayment plan that is the best fit and meet annual participation requirements."*

Consumer Financial Protection Bureau (CFPB) Comment Letter

NCHER appreciates that the CFPB agrees that covered calls should include servicing calls. Specifically, the CFPB states that *"based on its experience and expertise in servicing, the Bureau agrees that servicing calls can be beneficial to consumers, so long as those calls are otherwise in compliance with applicable consumer protection laws."* While the Bureau does not mention the Commission's proposed three call per month limit, it does state that in determining an optimal limit, a *"careful assessment of the advantages and disadvantages of limits on such calls is needed."* The Bureau's response clearly indicates that there are many advantages to such calls.

We concur with the CFPB that, regarding the content of covered calls, *"collectors and servicers should be permitted to convey content that [the call] is: (1) required by a law or regulation that governs the servicing or collections; or (2) relates to an effort to engage in loss mitigation or offer the consumer an alternate repayment plan,"* and includes *"efforts to describe alternative repayment plans available to borrowers with federal student loans under Title IV the Higher Education Act (20 U.S.C. 1070a et seq.)"* and *"efforts to describe options to cure defaulted federal student loans provided for under Title IV of the Higher Education Act (20 U.S.C. 1070a et seq.)."* We note that the Bureau's description of allowable

content is more expansive than that suggested by the Notice (or, as noted below, by the slightly broader proposal offered by NCLC). As an example, the Bureau suggests that “payment reminders” could be considered to be “covered calls.”

NCHER appreciates that the CFPB acknowledges that, *“as the prevalence of borrowers with landline telephone numbers decreases, collectors and servicers must be able to deliver these required communications to consumers through other methods, including calls made to wireless telephone numbers.”*

We believe the Bureau makes a good point related to the “identity of the called party” to possibly include more than just “the person or persons obligated to pay the debt” as proposed by the Commission. The Bureau points out that *“it would be useful to interpret the persons to whom covered calls may be placed generally to be consistent with those who are permitted to receive communications in the same manner as the alleged debtor.”* Referencing the Fair Debt Collection Practices Act (FDCPA), the Bureau notes that consumer is defined as *“any natural person obligated or allegedly obligated to pay any debt,”* and that related to required communications under the FDCPA, the definition of consumer can include *“the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator,”* since these parties are generally permitted to receive communications on behalf of the debtor. The Bureau further points out that other statutes and regulations, like mortgage servicing rules, *“similarly permit or, in some instances, require servicers and collectors to contact third parties instead of the debtor.”* NCHER agrees with the Bureau’s recommendation that *“the FCC permit covered calls to be made to the same individuals who are otherwise permitted to receive communications on behalf of the debtor.”*

The Bureau states that automated voice messages *“may be effectively used for some functions of servicing and collection, such as payment reminders.”* NCHER strongly agrees with this statement, though our proposal recognizes that it may be appropriate to set a sublimit covering such messages.

Finally, regarding the duration of covered calls, voice messages, or texts, NCHER appreciates that the Bureau *“does not advocate in favor or against any particular limits,”* but recognizes that should the Commission create such limits, the Bureau recommends *“that the time that it takes callers to provide any mandated disclosures under the FDCPA not be counted against the limit,”* and that it *“similarly recommends that any limit on the length of text messages should allow for a collector to provide any mandated disclosures under laws within the Bureau’s authority.”*

Public Comments Submitted by Consumer Groups

As noted below, NCHER concurs with a number of the comments provided by the National Consumer Law Center on behalf of a group of consumer organizations. However, we believe more flexibility is needed on calling borrowers and, therefore, take issue with their comment that supports what we believe is an unduly restrictive rule on call frequency.

NCHER notes and agrees with NCLC’s comment that *“many people in the United States today rely exclusively on a cell phone as their only means of communication.”* This is precisely why federal student loan servicers and collectors need to be able to communicate with student loan borrowers through their cell phones, as this demographic is far more likely to use only wireless devices for communication. The NCLC comments include, *“as noted in a recent Gallup study: ‘[t]exting, using a cellphone and sending and reading email messages are the most frequently used forms of non-personal communication for adult Americans.’ As Americans’ use of texts as a regular means of communication increases, unwanted texts become more and more invasive. People now respond to text messages in the same reflexive way they respond to calls—the beep of a text demands an immediate acknowledgment. As a result, autodialed texts that arrive in droves interrupt, annoy, and harass consumers just as robodialed*

calls do." NCHER concurs that texting is a preferred method of communication for the demographic most likely to have student loans, which is why student loan servicers and collectors should be permitted to contact student loan borrowers through text messages. NCHER believes there needs to be an appropriate balance between the number of texts that may be helpful to student loan borrowers and what might be considered invasive.

NCHER agrees with NCLC's comment that individuals who owe debts in collection are *"truly struggling to pay their debts."* It has long been our position that most student loan borrowers in delinquency or default are "willing but unable to pay" instead of "able but unwilling to pay." However, in the student loan context, Congress and the Administration have provided servicers and collectors with a number of important tools to help these borrowers. Borrowers in distress can choose among a number of income-driven repayment plans that can result in no required payment each month without further damaging their credit, and borrowers in default can pay as little as \$5 per month over a nine-month period to rehabilitate their defaulted loans and have the record of default removed from their credit histories.

NCLC comments that *"The calls themselves, the dread of future calls, and the fear of the dissemination of personal, embarrassing information to friends, neighbors, co-workers, and employers permeate the lives of consumers struggling to make ends meet. Indeed, in some cases, aggressive collection efforts have caused such significant emotional distress as to cause physical illness."* While this may be true in some cases, we know that being delinquent and/or in default on a federal student loan creates its own distress. As noted above, student loan servicers and collectors have tools to help these borrowers, and finding an affordable resolution to a student loan delinquency or default can go a long way towards relieving distress.

We appreciate that NCLC agrees that servicers, as well as collectors, should be able to make calls under the exception. The Notice provides that only calls made to delinquent borrowers are covered by the exemption. NCLC proposes to expand that definition to include borrowers "delinquent in meeting recertification requirements for a repayment plan." Specifically, NCLC states, *"We agree that some debt servicing calls might be helpful even when the debtor is not yet delinquent in her payments. However, we think that calls under this exemption should be made only when the debtor is delinquent in some obligation that relates to making the payments. Specifically, we are contemplating the situation where a debtor is delinquent in meeting recertification requirements for a repayment plan (such as by providing documentation of income and family size) but still has a limited time period to recertify and avoid the adverse consequences of the delinquency. Largely because of the importance of allowing student loan borrowers to ensure that they meet recertification requirements for forbearance or Income-Driven Repayment (IDR) plans, we are proposing this additional trigger for allowing these unconsented-to calls. We agree that borrowers will experience significant adverse consequences when they miss deadlines to recertify their income and family size for IDRs. These debtors' consequences will include spikes in their monthly student loan bills that are likely to lead to their inability to make full payments, leading eventually to default, as well as capitalization of all accrued interest. In 2015, the Department of Education provided data showing that over half of all borrowers in an income driven plan do not recertify on time. There is a critical 10-day window between the formal deadline to recertify for an IDR and the triggering of these adverse consequences. Under the IBR and PAYE repayment plans, if a borrower fails to provide income documentation within ten days of the servicer's deadline, payments are reset to the higher amount the borrower would have paid each month under a standard repayment plan. Similarly, under the REPAYE repayment plan, if a borrower fails to provide income documentation within ten days of the servicer's deadline, and the Department of Education is not able to determine the borrower's new monthly payment amount before the end of the borrower's annual payment period, the Department removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan with monthly payments that can be dramatically higher. Also, under all three programs, if the borrower is more than ten days late in providing the documentation, any unpaid accrued interest will be capitalized."*

NCHER also believes that covered calls should include periods before a borrower becomes delinquent, as waiting until he or she is delinquent on a loan is too late to prevent damage to the borrower's credit report and fails to allow the borrower to receive timely information to choose the repayment plan best suited for his or her unique circumstances. There are other decision points in the life-cycle of a student loan where borrower communication is key. For example, industry experience shows borrowers who begin making payments (even interest-only payments) during their grace period, before required payments begin, are far more likely to have a successful repayment experience. Communication with borrowers at the onset of their monthly payment obligations helps to ensure that they choose the right repayment plan for their individual circumstances (which is not always the plan with the lowest monthly payment) and that they understand their rights and responsibilities under the federal student loan program. We urge the Commission to consider the potential benefits to student loan borrowers who receive servicer calls during these decision points when deciding on which calls are covered under its regulations.

Through NCLC's reference to recertification requirements for forbearances and IDR plans in the federal student loan programs, it recognizes a key NCHER belief – that special consideration for federal student loans is appropriate and needed in order to assist student and parent borrowers. We believe NCLC has made a case for special treatment of student loans.

NCLC proposes that a permitted call is *“made ... only by the United States or a person who has contracted directly with the United States for the servicing or collection of this debt owed to or guaranteed by the United States.”* By using the term *“guaranteed by the United States,”* Congress intended calls on Federal Family Education Loan Program loans to be covered by the exemption. However, parties servicing and collecting these loans do not directly contract with the United States. There should be no requirement that the calling party must be one who has contracted directly with the United States. We support the comment that debt-buyers and debt relief companies be excluded from the list of permissible callers.

NCLC urges the Commission to require that callers document the basis for calling a particular phone number. NCLC argues that without this requirement there would be no reasonable way to ensure that callers are diligently limiting their calls to numbers for which there is a reasonable basis to believe they are reasonably accurate. NCLC recommends that the regulatory language require the caller to have records demonstrating the basis upon which it believes that each call will be received by the debtor intended to be called. We believe that this requirement is too rigid. Servicers and collectors have no reason or interest in making wrong-party calls. In the student loan context, the numbers called are those provided by the borrower, or contained in the borrower's student loan file, or those obtained through required skip-tracing efforts.

Regarding wrong-party calls, we note that NCLC strongly agrees with the one call rule on reassigned numbers. It is NCHER's position that callers need to be able to reach the called party to determine if the number is reassigned (i.e. one live contact should be allowed, not just one attempt). We note that most of the problematic facts cited in the NCLC response involve cases where the caller actually reached a person at the reassigned number, but then apparently failed to stop calling after being told that he or she had called a wrong number. These situations, which are already in violation of the TCPA, would not receive protection under our proposal.

Regarding call frequency, NCLC interprets the Notice as proposing that the three calls per month limit be applied to each loan, and then states that since student loan borrowers take out two or more loans per semester, the Commission's proposal will allow too many calls. While we do not necessarily agree with NCLC's interpretation of the Commission's proposal, such an interpretation could clearly result in a higher per borrower limit. NCLC therefore states, *“Our preference would be for the limit on unconsented-*

to robocalls to be applied to each debtor, but we understand that this limit might be difficult to coordinate among different servicers or collectors. However, the limit should at least be applied to each servicer or collector, so that a caller collecting on multiple loans is limited to a total of three robocalls per month.”

NCHER continues to believe its proposal on frequency is reasonable and in the best interests of federal student loan borrowers and the federal student loan program. We note that our proposal of no more than nine calls in a seven-day period is likely not far from what NCLC believes the Notice intends – and, as stated earlier, we agree with NCLC that the number of calls should be servicer- or collector-based for all of a borrower’s loans that can be combined for the purpose of contacting he or she under federal program rules. We note that if a servicer or collector is able to make live contact, our proposal will result in only one call per week, and possibly one call in total if the call results in a resolution that meets the needs of the borrower. Therefore, we again urge the federal government to endorse a public service campaign in the student loan arena encouraging borrowers to “Take the Call.” Doing so would allow borrowers to receive important information concerning their federal student loans, better understand the borrower-friendly options and consumer protections inherent in the federal student loan programs, and more-successfully manage their debt. A borrower who “takes the call” receives important information and also stops further calls unless requested by the borrower, two basic goals of the Commission’s Notice. Should the federal government embark upon such a campaign, it would be crucial to avoid encouraging borrowers to unsuspectingly take calls from debt relief companies or other organizations that charge for services borrowers can otherwise receive for free. NCHER would be willing to work with the Commission, the U.S. Department of Education, and other stakeholders to create a campaign that encourages student loan borrowers to take helpful calls from their servicers or collectors but devise a way to avoid abuse by student loan scammers.

NCLC proposes a one call per month sublimit on prerecorded calls as an incentive for callers to place live calls. While we agree that live calls in some cases are more effective, there are cases where a prerecorded call is all that is needed and we recommend a more accommodating standard to facilitate this unobtrusive method of communication. For example, and as suggested by the CFPB, payment reminders are one area where prerecorded calls may be appropriate. NCHER’s recommends a one call per week sublimit for prerecorded calls.

NCLC supports the Commission’s proposal that borrowers be given the right to stop calls, and then requires callers to inform debtors of this right at the outset of the call. NCHER believes that giving the consumer the ability to revoke the statutory authority to make a covered call without consent contravenes the exception by effectively re-imposing a consent requirement, especially if that revocation applies to subsequent callers. More importantly, such an “opt-out” provision essentially ensures that distressed borrowers will not receive timely and important information that can help them avoid delinquency or get out of default. Further, the FD CPA, as well as Unfair, Deceptive, or Abusive Acts or Practices considerations under the Dodd-Frank Wall Street Reform and Consumer Protection Act and similar state laws, already prohibit continued calls after a consumer request that such calls stop. Should the Commission rule that callers are required to inform debtors of the right to stop future calls, we believe it should cover only the autodialed calls without consent that are the subject of the Notice, and such a disclosure not interfere with the servicing or collection message.